

## EXPLANATORY STATEMENT

STATUTORY RULE NUMBER 149 OF 1987

### PROTECTION OF MOVABLE CULTURAL HERITAGE REGULATIONS

Issued by the Authority of the Minister for Arts, Heritage and Environment

Section 49 of the Protection of Movable Cultural Heritage Act 1986 permits the Governor-General to make regulations prescribing all matters necessary or convenient to be prescribed under the Act.

- . Section 8 of the Act provides for the regulations to prescribe a list, to be known as the National Cultural Heritage Control List. This is a list of categories of objects that constitute the movable cultural heritage of Australia and that are to be subject to export control. Objects included in this Control List are divided into two classes, namely -
  - (a) Class A objects, being objects that are not to be exported otherwise than in accordance with a certificate; and
  - (b) Class B objects, being objects that are not to be exported otherwise than in accordance with a permit or certificate.

The Schedule to the Regulations describes Class A objects, these being objects of special cultural significance to Australian Aborigines.

The Schedule will be expanded to include Class B objects at a later date, but, it was considered essential that Aboriginal heritage in particular be protected from the date the Act comes into operation.

- . Section 22 requires the National Cultural Heritage Committee to maintain a register of the names of persons determined by the Committee to be expert examiners for the purpose of the Act. Sub-section 22(1) provides for regulations to be made in relation to the establishment of a format for the Register of Expert Examiners. Professional staff of institutions will be included to provide this service as well as individuals from academic, commercial and other backgrounds.
- . Section 25 of the Act provides for the establishment of the National Cultural Heritage Fund (the Fund). Sub-section 25(3) provides for regulations to be made in relation to various matters concerning the Fund. The purpose of the Fund is to ensure that important objects of the national heritage which are barred from export should be readily available to the Australian public. The Fund will assist in the acquisition of such objects for display in a public collection. It is also believed that a

means should exist of helping owners to reach a fair price on the local market for an object which they may have wished to sell internationally.

The Regulations have enabled the necessary controls on the export of Australia's cultural heritage to be brought into effect, in part. The remaining controls will be introduced when the full Control List is completed.

Further details are given in Attachment A.

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**National Cultural Heritage Control List**

The categories of material to be protected are outlined in Section 7 of the Act. A National Cultural Heritage Control List is being drawn up, setting out these categories in greater detail. The first part of the Control List is one of the subjects of these regulations. The Control List distinguishes between Class A objects, namely those objects so rare and important as to be considered inalienable and Class B objects which in certain circumstances may be given an export permit.

Much of this material is already prohibited from export under the Customs Act and subject to seizure and forfeiture if an offence is committed. The relevant schedules of the Customs Act have been developed over many years, yet do not cover all categories of important cultural material. When the new Control List is fully established the present regulations under the Customs Act will be appropriately amended. All the categories to be included the Control List will be prescribed by regulations in due course.

**Register of Expert Examiners**

The Act requires the National Cultural Heritage Committee to maintain a register of the names of persons determined by the Committee to be expert examiners. The role of these experts is to provide the Committee with expert advice from universities, specialised government departments, research organisations and major collecting institutions on particular objects proposed for export. Experts on Aboriginal objects, both from the Aboriginal community and from academic institutions will be particularly important.

**National Cultural Heritage Fund**

The Fund addresses two important matters of principle. The first is to ensure that important objects of the national heritage which are barred from export should be readily available to the Australian public. Where objects are refused export permits, they will be acquired wherever possible for display in a public collection. The Fund will help facilitate these acquisitions.

The second principle relates to the rights of owners. The Act is designed to recognise an individual's right to enjoyment of property while establishing the Nation's right to restrict the movement of that property where it represents an irreplaceable part of the cultural heritage.

The Fund is a means whereby owners can be helped to reach a fair market price on the local market for an object which they may have wished to sell internationally.

The Fund will be made up of Commonwealth, State, Territory and possibly private and corporate contributions.